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ABSTRACT

Legal challenges faced by Christian liberal arts colleges affiliated with the Christian College Coalition were studied in 1983. Fifty-one of the 70 college presidents that were contacted returned questionnaires. The following areas were assessed: direct legal involvements during the past 5 years, threatened legal involvements, expected types of legal action in the future, legal counsel retained and fees, and the president's interest in a legal research/consultation fund and defense fund for the Coalition. Thirty-seven of the 51 colleges had experienced direct and threatened legal involvements and challenges. Most of the issues were resolved out of court. Where students were aggrieved, the issues included the following: complaints and/or charges of unfair academic standards, discrimination against the handicapped, enforcement of conduct regulations, and grade disputes. Contract disputes, especially those involving the termination of tenured faculty, were the dominant legal problems involving faculty. Several colleges reported charges that the college discriminated based on sex, religion, or age. Other colleges reported alumni challenges to their transcript release policies. The presidents responding to the survey also expected legal challenges to continue and even to increase in the future. (SW)

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LEGAL CHALLENGES TO CHRISTIAN COLLEGES

W. Richard Stephens*

American higher education has become increasingly litigious over the past twenty years. During the 1960s charges and complaints against institutions of higher learning, especially in the public sector, were swept into courts of law. In 1982 the Center for Constitutional Studies at the University of Notre Dame published the Legal Deskbook for Administrators of Independent Colleges and Universities. This reflects the fact that today private colleges and universities are also targets of legal action.

In recent years as enrollments declined, and the economy has been recessive, even the actions of many Christian liberal arts colleges to reduce personnel and programs have been subject to litigation and threats of litigation. The Christian College Coalition, a national organization of seventy Christian liberal arts colleges, has begun to develop ideas and programs to assit these instititions as legal entities. It was, therefore, the purpose of this study of the presidents of these colleges to gain understanding of the types and extent of legal challenges presidents and their colleges have been facing, and which they expect to face in the future.

Survey Methodology

During August, 1983, a questionnaire was developed and sent to each president in the Christian College Coalition seeking information about the legal involvements of his college. Fifty-one (51) of the seventy (70) questionnaires sent

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were returned, approximately seventy-three percent (73%). The questionnaires sought information on the following items about the college: direct legal involvements during the past five years, threatened legal involvements, expected types of legal action in the future, legal counsel retained and fees, and the president's interest in a Coalition legal research/consultation fund and defense fund.

The results of the survey were surprising in the extent to which the Christian Colleges in this study have become objects of legal challenge. One would have thought that the Christian mission of these colleges, and the Christian commitments of their constituencies, would have mitigated more than they have the litigious approach to resolving differences, complaints, and wrongs. As the findings and analysis which follow make clear, these Christian colleges are considered to be fair game for any kind of legal action, or threat of legal action, from all sectors of their constituents.

Direct and Threatened Legal Involvements

Of fifty-one (51) colleges responding to the questionnaire, thirty-seven (37) reported having experienced direct and threatened legal involvements and challenges during the past five years. Most of the issues were resolved out of court, and in favor of the colleges. However, a sizeable number of the cases were settled unfavorably to the colleges. Typically, the resolutions were in the form of insurance and institutional pay-offs to the aggrieved parties; only occasionally to date have settlements been in the form of court rulings whether favorable or unfavorable to the college.

It was discovered that the colleges were involved legally--directly or threatened--by widely varied types of persons. These included students, faculty, administrators, staff, alumni, parents of students, relatives of deceased donors who left estate gifts to the college, local zoning officials, state and federal government officials, interest groups such as the American Civil Liberties Union, local campus neighbors, employees of external contractors, and recipients of college health services.

Students: Where students were aggrieved the issues dealt with the following: complaints and/or charges of unfair academic standards, discrimination against the handicapped, enforcement of conduct regulations (e.g., hazing, homosexuality, and required chapel), grade disputes, student-professor relationships, bodily injury, work compensation, disciplinary dismissals, additional time and cost to complete a degree due to failing a course and subsequent schedule complications, admissions discrimination, denial of a sports team the opportunity to participate in a national tournament, Christian lifestyle expectations and enforcement, alleged lack of due process, and academic advisement. An example of a student-related legal issue was the case of a soccer player, aggrieved because he was dismissed from the college team for misconduct, who sued the university, the president, and the board of trustees. The case was thrown out of court. Most of the student complaint cases were settled out of court by discussion, compromise, insurance pay-offs, correction of mistakes, withdrawals of complaint in face of institutional resolve, and improvement of institutional procedures. And most were resolved favorably to the colleges.

Faculty: Contract disputes, especially those involving the termination of tenured faculty, were the dominant legal problems the colleges reported having with faculty. Nearly twenty percent (20%) of the responding colleges reported that terminated tenured faculty either took legal action or threatened it as a means of redressing their grievances. Some of these were resolved by institutional pay-offs and by reappointment; others were permitted to stand by withdrawal, and some yet remain in litigation.

Several colleges reported complaints taken by faculty to state human rights commissions and to the federal Equal Employment Opportunity Commission (EEOC). Such complaints have charged the colleges with discrimination based on sex, religion, and age. Even a part-time faculty member, reported one college, sought to establish sex discrimination as the reason for her non-reappointment. In another case a faculty member sought EEOC assistance to keep a denominational college from enforcing denominational considerations in their hiring practices. Thise case is in process and remains unresolved.

A former faculty employee at one of the colleges threatened legal action on Title IX grounds, that she was denied promotion because of her sex. The college's attorney advised a pay-off to avoid costly litigation. Another college, in a settlement with a state human rights commission, agreed to continue to pay a retirement fringe benefit even though the faculty member was disqualified for such by the college's retirement policy. A former administrator sued his college for alleged failure to follow due process in his release. His case was dismissed twice--on a demurrer and later on a summary judgment. An appeal was made to the state supreme court to overturn the summary judgment. The decision is pending, but if it is favorable to the administrator the case will be referred to a lower court for trial.

When one college attempted to close down an academic department, and dismiss its female chairperson, a class action suit was filed against the college. After college officials saw that the college's own procedures had not been followed fully, they rescinded their decision and kept the department.

It seem patent that Christian faculty members in increasing numbers are seeking satisfaction of their grievances against these colleges by resorting to secular courts and civil rights commissions. Such actions raise many questions about the legal rectitude of the college's policies and procedures, as well as about these faculty members' adherence to the Biblical principle that Christians are not to take their complaints outside of the Christian community.

Staff: Personnel in the Christian colleges of this study who work in food service and maintenance, and as secretaries and custodians have frequently taken or threatened legal action against the colleges. Charges were reported by the presidents of age and sex discrimination, unequal treatment in the administration of sick-leave, wrongful termination, and religious discrimination in hiring.

One major challenge to a religious test for employment is now in process in an institution in the Northwest. A candidate for a position in the physical plant department was denied employment for his failure to measure up to the institution's religious requirement for employees. The human rights commission of the state has notified the institution of its intention to use this employment decision to resolve the question of the constitutional right of religious organizations to prefer employees who are in agreement with these organizations' religious positions.

Others: Several colleges in the study reported alumni challenges to their transcript release policies. Normally, when a student leaves the college with an outstanding debt, an official transcript of grades will not be released at the student's request. In one case an alumnus declared bankruptcy and requested transcript release. Another college reported several threatened suits by alumni for its failure to release transcripts.

Parents may sometimes seek by legal action, direct or threatened, to force a college into some action. In this study, for example, the mother of former students threatened legal action because the college withheld information about her children's performances. She thought it inappropriate for the college to invoke the right to privacy act in her case. The college reported that the case was resolved by compromise and without litigation.

A college reported that an indirect pejorative reference about a cult by one of its faculty members resulted in a legal challenge to the college. To avoid interminable procedures and costs the college settled out of court. The faculty member's comment resulted in the college paying the cult several thousand dollars to cease litigation. Another college successfully withstood a legal challenge by the Hare Krishna organization who objected to the college's refusal to permit the organization to distribute its literature on campus.

The parents of a small child brought suit against a college in the study for injuries the child sustained in voluntary play on-campus. While swinging from a rope that a community lad had tied to a branch, the little girl let go, fell into the creek and broke both arms. On another campus, a neighborhood child, without permission, drove a campus tractor into a fence and sustained

neck injuries. On the same campus a baseball spectator was hit by a ball and injured. The insurance company settled both cases out of court with pay-offs.

Several Christian colleges reported that relatives of deceased donors had challenged the estate plans of the donor where the colleges were the beneficiaries. Some were successful, others not, and still other challenges are in process.

Finally, state and federal government agencies have denied some of the colleges in this study authorization to receive what are essentially tuition differential payments for students attending state approved and regionally accredited private colleges. The grounds for these actions have been that such Christian colleges were "patently religious" or "sectarian" in their operation and mission. The annual loss of funds for two of these colleges totaled $200,000.

Summary: It has been observed in recent years that American society is becoming increasingly litigious. The sample of findings reported above, which are probably only the tip of the iceberg, makes clear that at least 72 percent of the Christian colleges in the Coalition have not been exempted by their Christian ethos from the litigious press of the dominant culture. These colleges have been the objects of a wide range of direct legal challenges and threats of legal actions by all segments of their constituencies.

What is disturbing about these findings is the willingness of these colleges' constituencies, in times of disagreement and grievance, to treat the colleges primarily as legal agencies and not primarily as Christian communities where

Biblical principles are to be followed in such instances (I Corinthians 6:1-8). These colleges operate daily as Christian communities and, thereby, give their constituencies generous care, much freedom to use the colleges personally and as an agencies of redemption; they are not operated in the mode of bureaucratic legal entities. They, therefore, have not developed legally tight policies, procedures, and enforcement mechanisms. Hence, these colleges are easy marks for successful legal action by almost any aggrieved constituent and AAUP lawyer.

Further, since legal procedures are enormously time consuming and costly, these colleges are more likely to give in to the aggrieved party in the spirit of Christian values rather than go to court. But what an irony to see constituents of the college who joined its community primarily in response to a sense of God's leadership, respond to a grievance or separation by seeking redress of their grievance not by spiritual means but in the courts or other quasi legal agencies. One wonders what the outcome would be if a pastor or missionary followed this same approach. It is questionable whether constituents of these colleges can have it both ways: cause the colleges to be operated as tightly run legal bureaucracies at the same time they are warm and loving Christian communities. If the latter model is necessary for effective Christian education, then the price the constituencies may have to pay is abdication of the legal approach to redressing their grievances.

Expectation of Litigation

The presidents of Coalition colleges were asked to state their expectations about future legal involvements of their colleges. Having seen what their colleges experienced in legal challenges during the past five years, and sensing the litigious tendencies in their constituencies, the presidents

clearly believe that their colleges will become increasingly objects of legal action. More than two-thirds (67%) of the reporting presidents checked "yes" to the question about future legal challenges to their college.

Expressing a sentiment common among the presidents, one said that, "the increasing 'legal mentality' of so many of the people who make up the society in which we live . . . is affecting the church and Christians alike." Another president agreed saying, "students and faculty alike are beginning to think in terms of possible court actions. It is the trend of the times." The president of a very small college echoed this opinion: "Given the trend toward more litigation generally, I . certain increased legal pressures are to be expected." Because the expected trend "is much higher today than it was several years ago," the college "is carefully examining its liabilities in several areas currently."

When asked in what areas litigation or threat of litigation may occur, the presidents spoke as follows:

> Our "sectarian" character might be challenged at any time due to court interpretations which almost equate "religious" to "sectarian."
>
> A college on the move can expect to experience legal problems. These can't always be identified in advance.
>
> We feel that legal arguments as presented in the Bob Jones case and Grove City case could be a substantial threat to independent higher education.
>
> Parents are increasingly becoming aware of their legal options and are suing in cases of student discipline and other situations.
>
> Employees or potential employees are . . . becoming more legally active and could file more suits in the future.
>
> Termination of tenured faculty.

> The possibility of future actions involving personnel termination, student discipline and other such matters . . . appear to be target areas for legal action. . . . The fact that [ours] is an interdenominational college also raises additional questions as to the extent of constitutional protection available.
>
> . . . planned giving services . . . are likely to [raise legal issues] in the future particularly in view of the increased complexity of tax laws and regulations.
>
> We might encounter liability claims in connection with accidents on- and off-campus.
>
> . . . the integration of Biblical truth in any sphere of the education of our students [will cause us to] continue to face legal threats.
>
> [There could be] denial of financial aid funds to our students on the basis of the religious character of the college.
>
> We are concerned about the Department of Education requirement that colleges serve as enforcement agencies for the Selective Service System.

It seems clear that presidents fully expect their Christian colleges to be objects of legal action in the future, much as they have been in the recent past. The range and type of expected actions corresponds to those which the colleges have already experienced. As these expected legal actions become realities, costs of presidential and staff time and attorneys' fees will mount.

Attorneys' costs at the colleges, as reported by the presidents, varied from services which were provided free to $40,000 annually. Two colleges reported incurring $40,000 of attorney costs annually, one reported $16,000, and others annual costs of $8,000, $6,000, $4,500, $2,400, and $1,200. Some colleges pay on a per case basis for legal services, and some have in-house attorneys. If the average annual expenditure for attorney's fees of approximately $10,000 is incurred by all Coalition colleges, it is not insignificant that a total of $700,000 will be spent for other than direct educational or campus development programs. This is no plea to deny all legal services to these colleges, but it

is to point out the costs of an increasingly litigious approach to Christian college/constituent relationships. It is also obvious that many of these dollars could be better spent for educational and spiritual purposes as well as for salaries. But given the presidents' expectations of continued legal challenges, the future does not promise to bring reduced attorneys' fees to the Christian colleges.

Cooperative Legal Funds

Presently, the colleges in this study work principally independently in approaching their legal problems. When asked about their interest in a cooperative legal research and defense fund, the presidents were cautious. Only fifteen were interested in a joint research effort at $100 dues annually, while twenty-four expressed interest in a combined legal defense fund with ten favoring $100 dues, six $200 dues, and six $300 dues annually. Several presidents felt that such collective efforts were of minimal value and not worth the expenditure of time and money.

Summary

The findings of this study demonstrate considerable presidential awareness and involvement with legal aspects of their college. Further, presidents fully expect legal challenges to continue and even to increase in the future. This legalistic approach to resolving problems was viewed as deleterious to the over all Christian mission of these colleges, as well as exceedingly costly in both time and money.

It is recommended that the Christian College Coalition consider developing an in-service education program to assit these colleges in being more legally current in their policies and procedures, and in educating all of these colleges' constituencies to adopt other means then those litigious ones which are dominating our society and which are rapidly involving the campuses of the Christian college.

Note

The data for this paper were anecdotal in nature, and they are contained in the confidential questionnaires filed at Greenville College, Greenville, Illinois.